UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RESCAP SECURITIES HOLDINGS CO., Plaintiff, vs. ANNE M. NELSON, Defendant.	CIVIL ACTION NO. 4:16-cv-11653-DHH

EMERGENCY MOTION TO REMAND AND ENJOIN FURTHER FRIVOLOUS ATTEMPTS TO REMOVE THE INSTANT MATTER

The Plaintiff, ResCap Securities Holdings Co. ("ResCap"), moves this Court on an emergency basis to enter an Order pursuant to 28 U.S.C. §1447(c) remanding this case to Worcester Hosing Court and enjoining the Defendant, Anne M. Nelson ("Nelson") from filing further frivolous notices of removal in bad faith. As grounds for this Emergency Motion, ResCap state as follows:

1. This summary process eviction action was commenced against Nelson in the Worcester Housing Court on **August 30, 2010** as Case No. 2010H85SP003274. Nelson was served with the summons and complaint one week earlier, on **August 23, 2010**. A copy of the summons and return of service is attached hereto as **Exhibit A**.

2. On August 16, 2016, approximately six (6) years after Nelson was served with the summons and complaint and **only three (3) days before a summary process eviction trial**, Nelson has wrongfully attempted to remove this matter to the United States District Court for the District of Massachusetts.

3. According to the express language set forth in 28 U.S.C. § 1446(b) a "notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the

defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based…" The Unites States District Court for the District of Massachusetts has held that "[a]lthough the thirty-day time limit for notice of removal is not jurisdictional, it is a strictly applied rule of procedure and untimeliness is a ground for remand. *Roche v. Morgan Collection, Inc*., 882 F.Supp.2d 247, 251 (D.Mass. 2012) (internal citations and quotations omitted); *see also Montana v. Abbot Laboratories*, 266 F.Supp.2d 250, 254 (D.Mass. 2003)(the removal statute should be strictly construed, and any doubts about the propriety of removal should be resolved against the removal of an action). Moreover, 28 U.S.C. § 1446(c)(1) provides that "[a] case may not be removed…on the basis of [diversity] jurisdiction…more than 1 year after commencement of the action."

4. Although Nelson's purported removal cites both diversity jurisdiction and federal question as a basis for removal, the complaint filed in the underlying action does not raise any issue of federal question issue but is instead a simple summary process action asserting a superior righto possession of real property.

5. Nelson's attempted removal of this matter to the United States District Court for the District of Massachusetts on the basis of diversity jurisdiction approximately six (6) years after service is untimely, wrongful, frivolous, done in bad faith and is an abuse of the judicial system and the resources of the United States District Court for the District of Massachusetts.

6. Since the commencement of this action, Nelson has deliberately taken all possible actions to delay this summary process action from proceeding to trial.[1] This matter is now

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[1] After the commencement of this action, Nelson filed a complaint against ResCap's predecessor-in-interest seeking a declaratory judgment invalidating foreclosure of the property located at 71 Settlers Lane, Unit 75, Marlborough, Massachusetts. After Nelson filed her complaint, the trial court granted Nelson a preliminary injunction enjoining the summary process eviction action from proceeding. After years of litigation, on June 29, 2012, the trial court issued a decision and order determining that the foreclosure sale of the Property was valid and thereafter entered

scheduled for a summary process eviction trial in the Worcester Housing Court on August 19, 2016 and Nelson's wrongful removal should not impact ResCap from proceeding with trial or otherwise delay this matter from resolution after six years in the Worcester Housing Court.

WHEREFORE, ResCap Securities Holdings Co. respectfully request that this Court enter an Order (i) remanding the case to the Massachusetts Superior Court in accordance with 28 U.S.C. § 1447(c); (ii) enjoining the Defendant, Anne M. Nelson, from filing further frivolous notices of removal in bad faith; and (iii) awarding ResCap Securities Holdings Co. the fees and costs it incurred in reviewing and responding to the frivolous notice of removal filed in bad faith by the Defendant, Anne M. Nelson.

Respectfully submitted,

RESCAP SECURITIES HOLDINGS CO.

By Its Attorneys,

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final judgement on January 4, 2013. Following entry of final judgment, on January 16, 2013, Nelson filed a motion for relief from judgment, which was denied by the Court. Nearly five months after the denial of her first motion for relief from judgment, Nelson filed a second motion for relief from judgment. Thereafter on November 25, 2013, Nelson filed a notice of appeal with the Appeals Court of Massachusetts. Nelson's appeal was denied as it was filed out of time. The summary process eviction matter was then scheduled for trial in April 2014, and Nelson advised the Court that she would be appealing the Appeals Court's decision to deny her appeal, again delaying trial on this matter. On February 25, 2015, the Appeals Court affirming the denial of Nelson's late appeal. Nelson then filed an Application for Further Appellate Review with the Supreme Judicial Court, which was denied on June 3, 2015, the On July 27, 2015, Nelson filed a Petition to Reconsider with the Supreme Judicial Court, and the Court denied the same on September 4, 2015.

CERTIFICATE OF SERVICE

I, Matthew R. Shechtman, hereby certify that on this 17th day of August, 2016, I served a true and accurate copy of the foregoing document to counsel of record via first class mail postage prepaid and via electronic mail to Defendant, Anne M. Nelson, postage prepaid as follows:

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